

Jasper Seating Company, Inc. and Local 325, United Furniture Workers of America, AFL-CIO, Petitioner. Case 25-AC-20

August 31, 1977

DECISION ON REVIEW

On August 12, 1964, the Board, in Case 25-RC-2637, certified the Jasper Union as the collective-bargaining representative in an appropriate unit of the Employer's production and maintenance employees. On June 24, 1976, the Petitioner filed the instant petition seeking to amend the certification to change the name of the certified bargaining agent from "Jasper Independent Union" to "Local 325, United Furniture Workers of America, AFL-CIO."

A hearing was held on the petition on July 19, 1976, before Hearing Officer Patrick Shaw at Jasper, Indiana. All parties appeared at the hearing and were given full opportunity to participate therein. On November 9, 1976, the Regional Director for Region 25 issued a Decision granting the Petitioner's amendment of certification request. Thereafter, the Employer filed a timely request for review of the Regional Director's decision, alleging that the Regional Director erred in amending the certification. The Employer filed a brief in support of its request for review and Petitioner filed a brief in opposition thereto.

By telegraphic Order dated January 18, 1977, the Board (Member Murphy dissenting) granted the Employer's request for review. Thereafter, the Petitioner filed a brief on review.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, including the briefs of the parties, the Board finds:

In mid-January 1976, Ronald Buechlein, secretary-treasurer of the Jasper Union, met with Ray Wilhite, a district director of Petitioner's International union and discussed the possibility of Jasper Union affiliating with the International. At a meeting of the Jasper Union's membership on January 30, Wilhite addressed the members about affiliation. All 30 of the members present voted to take the necessary steps to affiliate. Ten of the members asked that their names appear as charter members of Petitioner.

On January 31, Wilhite advised the International's president of the names of the 10 members who wished to be chartered and applied for a charter number. In a few days, Wilhite received from the International the requested charter which he retained until the affiliation vote.

On February 2, Buechlein posted a notice at each of the Employer's timeclocks which read as follows:

"SPECIAL MEETING OF JASPER UNION TO BE HELD AT German American Bank basement AT 7:30 P.M. ON February 19, 1976, A SECRET BALLOT VOTE WILL BE TAKEN ON THE ISSUE OF AFFILIATION OF THIS UNION WITH THE UNITED FURNITURE WORKERS OF AMERICA, AFL-CIO, UNION. ALL MEMBERS ARE URGED TO BE PRESENT." The notices remained posted until after the meeting.

The meeting was held as scheduled on February 19. As the members arrived at the meeting, they signed a paper and their names were checked off a membership list. Five nonmember employees appeared and were told that they could stay and vote if they joined the Jasper Union. They each paid \$1 monthly dues and their names were added to the membership list. Buechlein then called the meeting to order and read the minutes of the January 30 meeting. Buechlein introduced Wilhite who spoke in favor of affiliation. Wilhite explained that affiliation required ratification by the employees through a secret-ballot election and that the present collective-bargaining agreement with the Employer would remain intact. Wilhite then asked if there were any questions. After Wilhite spoke, 12 employees from neighboring plants who belonged to an organizing committee of Petitioner's sister local union introduced themselves and told how long they had been in their union. Some said that they had received wage increases from recent contract negotiations.

After this, Buechlein read the proposed affiliation resolution. The resolution stated that Jasper Union would continue its relationship with the Employer as bargaining representative, but that it would be known by the Petitioner's name and its assets and property, including the collective-bargaining agreement, would be held under the new name. The ballots set forth the proposed resolution verbatim.

Wilhite and the other nonemployees left the room and the employees voted on the resolution. Each member's name was called from the membership list, the member was handed a ballot, and the individual carried his ballot behind a curtain where he marked it and deposited it in a box, and returned to his seat before the next name was called. When all the members present had voted, the votes were tallied by reading the ballots aloud. Of about 86 unit employees, 49 were on the membership list and were considered eligible to vote at the time of the affiliation election. (As mentioned above, 5 of the 49 were nonmembers who signed up the day of the election.) Of these 49, 38 voted. The tally was 35 for affiliation and 3 against. After the tally, Wilhite was called into the room and presented the charter to Buechlein.

Since the affiliation vote, the bylaws of the Jasper Union have remained in effect and the amount of

dues has continued unchanged. All Jasper Union bank accounts have been put under the Petitioner's name except for one savings account which has not been changed because its accrued interest would be lost. Buechlein, the former secretary-treasurer of Jasper Union, has been elected to fill the vacant post of president of Petitioner and a new person has been elected secretary-treasurer. One new steward's position has been added to the four that existed at the time of the election. The Petitioner does not now pay a per capita dues tax to its International union, but it did pay that tax on one occasion so that Buechlein could participate at the International's convention. There have been no other substantial changes.

The Employer attacks the granting of a certification amendment on the grounds that: (1) the January 30 vote was the actual affiliation vote (and was conducted without adequate procedural safeguards); (2) in the alternative, the February 19 vote (assuming that it was the actual affiliation vote), was conducted without adequate procedural safeguards; (3) the substitution of Petitioner for the Jasper Union effected a substantial change in bargaining representative and thus raised a "question concerning representation" requiring a Board-conducted election; and (4) nonmembers of the Jasper Union were not given adequate opportunity to vote.

We reject the Employer's contention that the January 30 vote rather than the February 19 vote was the actual affiliation vote. The manner in which the February 19 election was conducted, together with Wilhite's statements to the employees, makes it clear that affiliation was contingent upon the February 19 vote. It likewise appears that the Employer's second and third objections are without merit. The secret ballot election of February 19 seems to have complied with the safeguards required by the Board for affiliation votes and there has been no essential change in the identity of bargaining representative (at least within the meaning of past Board precedents).¹ We agree, however, with the Employer's objection that nonmembers were not given an adequate opportunity to participate in the affiliation vote. As Members Jenkins and Zagoria stated in their dissent in *North Electric Company*,²

If the Board is to accept privately conducted elections as a basis for amending Board certifications, it should be certain that minimal standards of due process be observed lest the very validity of Board certifications and elections be undermined. Granted that employees in a bargaining unit cannot be compelled to vote, they can, at the

very least, be afforded *the opportunity to vote*. It appears basic to the collective-bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit. In our view, therefore, a cardinal prerequisite to any change in designation of the bargaining representative is *that all employees* in the bargaining unit be afforded the opportunity to participate in such selection.

In the present case, the Jasper Union, by refusing to permit nonmembers to vote, effectively disenfranchised 38 of the approximately 86 unit employees from voting. Although nonmembers who came to the affiliation meeting were permitted to vote if they became members, they were not permitted to vote as nonmembers. Moreover, the election notices were addressed solely to Jasper Union members. Nonmembers should have been given an equal unqualified opportunity to participate in the affiliation vote. Since they were not, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

MEMBER PENELLO, concurring:

I agree with my colleagues that the petition in this case should be dismissed. However, my concurrence in this result is based upon the application of principles different from those applied by my colleagues.

This case involves the affiliation of the Jasper Union, a small, independent local union, with the United Furniture Workers of America. The vote in favor of affiliation occurred on February 19, 1976. Thereupon, the Petitioner herein, Local 325 of the United Furniture Workers, filed the instant petition seeking to amend the certification to change the name of the employees' bargaining representative from the Jasper Union to Local 325.

In dismissing the petition, my colleagues rely on record evidence which indicates that only those unit employees who were actually members of the Jasper Union were allowed to participate in the affiliation vote. They are of the opinion that all unit employees, regardless of whether they were Jasper Union members, should have been given the opportunity to participate in the affiliation vote. In so finding, my colleagues rely on the dissenting opinion in *North Electric Company*,³ where Members Jenkins and Zagoria essentially stated that all unit employees are entitled to vote where there is "any change in

¹ See *Emery Industries, Inc. (Dice Road)*, 148 NLRB 51 (1964); *Safway Steel Scaffolds Company of Georgia*, 173 NLRB 311 (1968); *The Hamilton Tool Company*, 190 NLRB 571 (1971); and *East Dayton Tool & Die Company*, 190 NLRB 577 (1971).

² 165 NLRB 942, 944 (1967).

³ 165 NLRB 942 (1967).

designation of the bargaining representative.” My colleagues specifically reject the Employer’s contention that the substitution of Petitioner for the Jasper Union effected a substantial change in the identity of the employees’ bargaining representative which change raised a question concerning representation requiring a Board-conducted election. They find that there has been no essential change in the identity of the representative.

It thus appears to me that my colleagues are of the opinion that this case merely involves a change in designation, i.e., change in name, of the bargaining representative. A logical corollary of their finding herein is that they would have granted the amendment to certification to change the name if it appeared that all unit employees, membership in the Jasper Union notwithstanding, had participated in the affiliation vote.

If I could agree with my colleagues that this case involves merely a change in the name of the employees’ bargaining representative, then I would not hesitate to agree with the conclusions they reach herein. However, I am of the opinion that more is involved here than a simple alteration in the name of the representative. For the reasons stated below, it is clear to me that a possible affiliation by the Jasper Union with Petitioner involves a substantial change in the actual identity of the bargaining representative. Thus, I would apply the principles set forth in *American Bridge Division, United States Steel Corporation v. N.L.R.B.*,⁴ and find that the change in identity raises a question concerning representation which can only be resolved by a Board-conducted election and not by the Board’s amendment to certification procedures. Accordingly, it is by virtue of such a representation election that all unit employees would be entitled to vote for or against affiliation.

American Bridge involved the affiliation of a local, independent labor organization (the Association) consisting of 304 members with the United Steelworkers of America consisting of over 1 million members. Both at the outset and in its conclusion, the Court noted that if the change in the identity of the employees’ bargaining representative merely involved a reflection of a change in the name of such representative, it would have no difficulty in applying the Board’s procedures to amend certification.

However, the Court noted that, after the affiliation took place, the Association did not remain the same organization under a new name. The Court stated (457 F.2d at 663–664):

By the simple expedient of amending the certification, the Association has been supplanted by an international union as the bargaining representative, and control over the rights of its members has been transferred from an independent body . . . to an international union

The Court took note of the fact that the language of the existing contract, the local officers, and the employees covered by the contract remained the same after the affiliation took place. However, the Court was aware that the rights of the parties had been altered, since, by virtue of the affiliation, the new local became subject to the International constitution of the Steelworkers and that the constitution effected substantial changes in the rights of the parties.

In essence, the Court found itself confronted with a “clear question of representation. Will the unit’s members be represented by their own local officers or by the Steelworkers’ Union?” Because of the changes incurred as a result of the affiliation and because the Association no longer retained its status as an independent union, the Court answered its own question in the negative. The Court (at 665) concluded with these words:

To permit [the amendment to certification procedure] to cover additional situations [i.e., situations other than those involving a mere change in the name of the representative] involving significant changes in the actual identity of the representatives and the diminution in the rights of the bargaining units’ members without a Board-sponsored election exceeds the scope and purpose of the Board’s own rules and is contrary to the sound legislative policy behind Section 9 of the National Labor Relations Act.

In my opinion, the circumstances present in *American Bridge* are clearly present in the instant case. Here, a small, independent local union representing approximately 86 unit employees, of whom 49 were members of the Jasper Union at the time of the affiliation vote, seeks to affiliate with an international union consisting of approximately 30,000 members. It appears that the bylaws of the Jasper Union have remained intact, the amount of dues has remained the same, and local officers have basically been retained. However, despite these surface similarities, it is clear to me that the identity of the bargaining representative has been modified by virtue of the fact that the unit employees are now subject to the International’s constitution with its

⁴ 457 F.2d 660 (C.A. 3, 1972). See also *Independent Drug Store Owners of Santa Clara County*, 211 NLRB 701 (1974).

attendant changes in the rights and obligations of the parties.

Thus, the question posed herein is the same as that posed in *American Bridge*: "Will the unit's members be represented by their own local officers or by the International Union?" The change from a local independent union to an international union is not a mere alteration in name, but a clear change in the identity of the employees' bargaining representative. Therefore, I am constrained to say that if the amendment to certification were granted herein, the unit employees would no longer be represented by the former Jasper Union, but by the International union. This change in identity raises a clear question concerning representation which can only be resolved by a Board-conducted election. Therefore, in the circumstances of the present case, I would dismiss the petition, since I would require a Board-sponsored election to be conducted pursuant to a representation petition to determine whether the employees in the bargaining unit desire to be affiliated with the United Furniture Workers of America. Thus, all unit employees would be entitled to vote in such an election, membership in the Jasper Union or the lack thereof notwithstanding.

CHAIRMAN FANNING and MEMBER MURPHY, dissenting:

This petition to amend a certification is being dismissed by a majority of the Board based only upon a common result. Board precedent since the institution of the amendment of certification procedure has supported granting an amendment in circumstances such as those before us.

Members Jenkins and Walther see defects in the voting process utilized by the Jasper Union in the vote for affiliation with the United Furniture Workers, contending that 38 of approximately 86 employees were disenfranchised. Member Penello in his separate concurrence sees a substantial change in the identity of the bargaining representative as a result of the affiliation; he requires a Board representation election when "a small, independent local union affiliates with an international union," consistent with the opinion of the Court in *American*

⁵ *American Bridge Division of United States Steel Corporation v. N.L.R.B.*, 457 F.2d 660 (C.A. 3, 1972).

⁶ *Amoco Production Company*, 220 NLRB 861 (1975). In this case both employer and union had gone through several name changes perpetuated by contract. The affiliation vote was handled by mail ballot but preparatory meetings were held to discuss affiliation, attended both by members and nonmembers of the union, and voting eligibility could be acquired by signing a dues-deduction form. Member Jenkins in his dissent saw no significance in the fact that the pro-affiliation majority exceeded the 97 excluded, as nonmembers, from voting.

⁷ *Bear Archery, Division of Victor Comptometer Corporation*, 223 NLRB 1169 (1976), enforcement denied 95 LRRM 3094, CCH NLRB ¶16,764 (C.A. 6, 1977). The Court opinion is based specifically upon Member Walther's dissent, which emphasized the affiliation of a "small" group

Bridge.⁵ More recently, in *Amoco Production Company*,⁶ we—Member Jenkins dissenting—upheld a similar affiliation vote crucial to an 8(a)(5) proceeding, as we did in *Bear Archery, Division of Victor Comptometer Corporation*,⁷ Member Walther dissenting.

The Jenkins-Walther view in this case permits mid-contract affiliation under the auspices of the existing local, it does not assess the problem as one of electing a new bargaining representative under Board auspices because of change of identity, but does require — in addition to proper notice and an orderly vote with secret balloting — that the vote be extended to all unit employees and not just members of the existing local organization. We agree of course on certain procedural requisites: proper notice, some safeguards for distributing ballots individually to the eligible voters, reasonable precautions for secret marking of the ballots, and adherence to the body's pertinent constitutional requirements unless effectively waived. We do not agree, however, that employees who are *not* members need be included in an affiliation vote that contemplates continuation of the contract by the newly affiliated bargaining representative. In our view, stability in the bargaining relationship is enhanced by a continuation of the Board policy not to *require*, as a majority view of this Board, nonmember participation in the vote. Such nonmember employees have, unless ineligible by contract because of probationary status, determined not to support the bargaining representative by participation in union affairs. Those nonprobationers who have consciously avoided membership cannot, however, be barred from joining should they change their minds. If they are sufficiently interested in the proposed affiliation, they can — as in this case — join and participate. The affiliation vote is not being taken to select a new bargaining representative but to determine whether the members want assistance in conducting their affairs with the employer — as Petitioner here contends. The vote is, truly, an internal union matter, as the Board found in *The Hamilton Tool Company*, 190 NLRB 571, 574 (1971). There the full Board⁸ reexamined the affiliation issue after oral argument, including the nonmember voting

(about 500) with a large international, the vote being taken with a UAW representative in attendance but no impartial third party, inadequate time for employee reflection on the issues, and a stifling of opposition resulting from a "not truly secret" ballot. Like *Hamilton Tool*, the only employees "disenfranchised" were probationers. The Board majority observed (last sentence fn. 7):

Where, as here, reasonable steps were taken to assure a fair vote, we do not believe that microscopic examination of the voting procedure is warranted if, in the end, the employees are thereby deprived of their bargaining representative and denied their right to join with other union employees for their mutual aid and protection.

⁸ In *Hamilton Tool*, Chairman Miller concurred in the result as

facet. Thirty 90-day probationary employees were not union members under the terms of the bargaining contract that included a union-security clause, and were not entitled under the federation's constitution to vote in an election held by it. The Board noted that, even if the 30 probationers had all voted against affiliation, there would still have been a majority vote in favor and concluded that the amendment of certification would insure to employees the continuity of their present organization and representation, with the former federation functioning as a local of an international union.

Member Penello, based on the Court decision in *American Bridge*, which issued in 1972 shortly after he joined the Board, specifically finds here that the identity of the bargaining representative has changed, a question concerning representation has been raised, and the matter can be resolved only by a Board-conducted election. This would entail a petition of the Furniture Workers, timely with respect to the end of the Jasper Union's existing contract and involving the unit as a whole in the voting.

Thus, for widely divergent reasons, Member Penello and Members Jenkins and Walther agree only that all unit members should be accorded a vote on affiliation.

The Court in *American Bridge* looked at the Steelworkers constitution and concluded that the bargaining "unit" had changed because of the diminution in the rights of unit members "who can no longer fix their own dues, fines and assessments or have their local officers negotiate contracts, handle grievances, and decide when to strike." These changes were such as employees seeking to have their independent organization affiliate with an international union could, eventually, anticipate and, in that case, such changes must already have occurred when the Court's March 1972 opinion issued, dismissing the refusal-to-bargain finding. By then considerable time had been consumed in processing the charge. The employer had, before the October 1969 affiliation, urged the salaried and clerical employees involved to weigh carefully various problems, including a provision in the Steelworkers basic contract that included "all" employees for whom the Steelworkers "may be certified." The Board noted that an amendment of certification was not a "new certifica-

conforming to Board precedent, but expressed a leaning toward modification of the Board's contract-bar policies rather than continuing "to rely on elections conducted under varying privately adopted rules." Member Jenkins dissented for the reasons stated in his dissent in *North Electric Company*, 165 NLRB 942 (1967). Member Zagoria joined him in that dissent, the thrust of which was that the Board, by granting the amendment of certification with 50 employees (not yet union members) disenfranchised, was undermining its own processes and permitting a change in the

tion or recertification" and granted the amendment. (185 NLRB 669.) Immediately, the employer refused to bargain with the Steelworkers under the existing association contract that ran until some time in 1971, with the result that the employees were, in effect, denied a trial period during which their local officers might have operated with international advice and assistance.

If, as in *American Bridge*, an employer resists affiliation and refuses to acknowledge its continuing bargaining responsibilities, a "trial" period normally afforded by midterm affiliation is obviously absorbed by the refusal-to-bargain charge that results. But if, as in many cases, the employer cooperates, a beneficial trial period under the existing contract is afforded, with the employees having the option, at contract end, to petition for decertification under Board auspices if in fact they are dissatisfied with the results of affiliation. The Board's contract-bar rules as they presently exist will have been adhered to, and the employees who did not wish to delay seeking the assistance of an international union in dealing with their employer will have been accommodated.

With appropriate safeguards for the affiliation vote, and organizational continuity as described in *Hamilton Tool*, we see no reason not to continue to treat such efforts as an internal union matter. In addition we would here point out that the notices for the meeting held by Jasper Union to vote on affiliation were posted at the plant timeclocks, and that, although the notices were addressed to "all members" and "members" were urged to be present, five nonmembers appeared, were added to the membership list upon payment of the customary \$1 monthly dues, and voted. This increased the Jasper Union membership to 49; the unit numbered approximately 86; 35 voted for and 3 against affiliation, a majority of the membership. Since the vote, as the hearing on the amendment request reflects, at least 10 nonmembers have joined the affiliated local. As a practical matter nonmembers did have an equal opportunity to participate in the affiliation, though not specifically invited to do so, and a majority of 45 in a unit of 86 have registered approval of the affiliation. We would not glorify form over substance by denying this amendment of certification.

bargaining representative midstream. The majority noted that objections to the regularity of the election — based upon the fact that names were not checked from an eligibility list, members remained in the hall after voting, and some UAW members were still in the hall when the voting began and may have answered some employee questions — were not made by employees.